

Small Business Administration

§ 115.13

its Affiliates are aggregated to determine the Contract or Order amount if SBA determines, after discussion with the contracting official responsible for the award of the contract, that award of a single Contract or Order could reasonably have satisfied the supply or service requirement at the time of issuance.

(3) *Contracts or Orders in excess of \$2,000,000.* SBA is not authorized to guarantee bonds on Contracts or Orders in excess of \$2,000,000 if the statement of work involves, directly or indirectly, construction, operation, renovation or improvement of a casino or other gambling establishment, aquarium, zoo, golf course or swimming pool, or the Contract Obligor has one of the following NAICS codes:

(i) 713210—"Casinos (Except Casino Hotels)";

(ii) 721120—"Casino Hotels";

(iii) 713290—"Other Gambling Industries";

(iv) 713910—"Golf Courses and Country Clubs";

(v) 712130—"Zoos and Botanical Gardens"; or

(vi) 713940—"Fitness and Recreational Sports Centers" if SBA determines the business is a swimming pool.

(4) *Federal Contracts or Orders in excess of \$5,000,000.* Through September 30, 2010, SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than \$5,000,000, and up to \$10,000,000, upon a signed certification of a Federal contracting officer. The contracting officer's certification must include a statement that the small business is experiencing difficulty obtaining a bond and that an SBA bond guarantee would be in the best interests of the Government. The certification must be express mailed to SBA, Office of Surety Guarantees, 409 Third Street, SW., Suite 8600, Washington, DC 20416, or faxed to the Office of Surety Guarantees at 202-481-0390, with a copy provided to the small business, and must include the following additional information:

(i) Name, address and telephone number of the small business;

(ii) Offer or Contract number and brief description of the contract; and

(iii) Estimated Contract value and date of anticipated award determination.

(f) *Transfers or sales by Surety.* Sureties must not sell or otherwise transfer their files or accounts, whether before or after a default by the Principal has occurred, without the prior written approval of SBA. A violation of this provision is grounds for termination from participation in the program. This provision does not apply to the sale of an entire business division, subsidiary or operation of the Surety.

[61 FR 3271, Jan. 31, 1996, as amended at 66 FR 30804, June 8, 2001; 74 FR 36109, July 22, 2009]

§ 115.13 Eligibility of Principal.

(a) *General eligibility.* In order to be eligible for a bond guaranteed by SBA, the Principal must comply with the following requirements:

(1) *Size.* Together with its Affiliates, it must qualify as a small business under part 121 of this title.

(2) *Character.* It must possess good character and reputation. A Principal meets this standard if each owner of 20% or more of its equity, and each of its officers, directors, or general partners, possesses good character and reputation. A Person's good character and reputation is presumed absent when:

(i) The Person is under indictment for, or has been convicted of a felony, or a final civil judgment has been entered stating that such Person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships; or

(ii) A regulatory authority has revoked, canceled, or suspended a license of the Person which is necessary to perform the Contract; or

(iii) The Person has obtained a bond guarantee by fraud or material misrepresentation (as described in §115.19(b)), or has failed to keep the Surety informed of unbonded contracts or of a contract bonded by another Surety, as required by a bonding line commitment under §115.33.

(3) *Need for bond.* It must certify that a bond is expressly required by the bid solicitation or the original Contract in order to bid on the Contract or to serve as a prime contractor or subcontractor.

§ 115.14

(4) *Availability of bond.* It must certify that a bond is not obtainable on reasonable terms and conditions without SBA's guarantee.

(5) *Partial subcontract.* It must certify the percentage of work under the Contract to be subcontracted. SBA will not guarantee bonds for Principals who are primarily brokers or who have effectively transferred control over the project to one or more subcontractors.

(6) *Debarment.* It must certify that the Principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any Federal department or agency, under governmentwide debarment and suspension rules.

(b) *Conflict of interest.* A Principal is not eligible for an SBA-guaranteed bond issued by a particular Surety if that Surety, or an Affiliate of that Surety, or a close relative or member of the household of that Surety or Affiliate owns, directly or indirectly, 10% or more of the Principal. This prohibition also applies to ownership interests in any of the Principal's Affiliates.

§ 115.14 Loss of Principal's eligibility for future assistance.

(a) *Ineligibility.* A Principal and its Affiliates lose eligibility for further SBA bond guarantees if any of the following occurs under an SBA-guaranteed bond issued on behalf of the Principal:

(1) Legal action under the guaranteed bond has been initiated.

(2) The Obligor has declared the Principal to be in default under the Contract.

(3) The Surety has established a claim reserve for the bond of at least \$1000.

(4) The Surety has requested reimbursement for Losses incurred under the bond.

(5) The guarantee fee has not been paid by the Principal.

(6) The Principal committed fraud or material misrepresentation in obtaining the guaranteed bond.

(b) *Reinstatement of Principal's eligibility.* Prior Approval Sureties should refer to § 115.36(b) for provisions on reinstatement of the Principal's eligibility. A PSB Surety may reinstate a

13 CFR Ch. I (1-1-11 Edition)

Principal's eligibility upon the Surety's determination that reinstatement is appropriate.

§ 115.15 Underwriting and servicing standards.

(a) *Underwriting.* (1) Sureties must evaluate the credit, capacity, and character of a Principal using standards generally accepted by the surety industry and in accordance with SBA's Standard Operating Procedures on underwriting and the Surety's principles and practices on unguaranteed bonds. The Principal must satisfy the eligibility requirements set forth in § 115.13. The Surety must reasonably expect that the Principal will successfully perform the Contract to be bonded.

(2) The terms and conditions of the bond and the Contract must be reasonable in light of the risks involved and the extent of the Surety's participation. The bond must satisfy the eligibility requirements set forth in § 115.12(b). The Surety must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the Contract.

(b) *Servicing.* The Surety must ensure that the Principal remains viable and eligible for SBA's Surety Bond Guarantee Program, must monitor the Principal's progress on bonded Contracts guaranteed by SBA, and must request job status reports from Obligees of Final Bonds guaranteed by SBA. Documentation of the job status requests must be maintained by the Surety.

§ 115.16 Determination of Surety's Loss.

Loss is determined as follows:

(a) *Loss under a Bid Bond* is the lesser of the penal sum or the amount which is the difference between the bonded bid and the next higher responsive bid. In either case, the Loss is reduced by any amounts the Surety recovers by reason of the Principal's defenses against the Obligor's demand for performance by the Principal and any sums the Surety recovers from indemnitors and other salvage.

(b) *Loss under a Payment Bond* is, at the Surety's option, the sum necessary to pay all just and timely claims against the Principal for the value of